

NOT TO BE PUBLISHED

California Rules of Court, rule 977(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 977(b). This opinion has not been certified for publication or ordered published for purposes of rule 977.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Sutter)

----

THE PEOPLE,

Plaintiff and Respondent,

v.

WILLIAM JOSEPH YAKLICH et al.,

Defendants and Appellants.

C049001

Super.Ct. No.CRF040564

Defendant William Joseph Yaklich appeals his convictions after pleading no contest to possessing ephedrine or pseudoephedrine with the intent to manufacture methamphetamine (Health & Saf. Code, § 11383, subd. (c)(1)), and misdemeanor second degree burglary. (Pen. Code, § 459.) His wife, defendant Rhonda Yaklich, appeals her convictions after pleading no contest to second degree burglary (Pen. Code, § 459) and aiding and abetting in the use of drugs. (Health & Saf. Code, § 11366.5.) Both pleas were entered after the court denied the

defendants' motions to suppress (Pen. Code, § 1538.5). William and Rhonda were both granted probation.

#### STATEMENT OF FACTS

On October 14, 2003, Officer Paul Hatfield was a NET-5 officer for Yuba City.<sup>1</sup> On the NET-5 team, he is primarily responsible for narcotics investigations. He received a telephone call from a Target store employee, indicating that a male customer was in the store buying the legal limit of three boxes of pseudoephedrine tablets. The employee gave Officer Hatfield a description of the man, his vehicle and the license plate number.

Officer Hatfield drove to the store parking lot and located the car. He also noticed there was a female passenger inside. The employee pointed out William as he left the store. William got into the car which had been described over the phone. Rhonda then got out of the same car and went into the store. The employee reported Rhonda also purchased the legal limit of three boxes of pseudoephedrine tablets, in addition to two 1-quart bottles of hydrogen peroxide. Pseudoephedrine tablets and hydrogen peroxide, along with tincture of iodine, are the

---

<sup>1</sup> The Sutter-Yuba Narcotic Enforcement Team is better known as "NET-5." It is a joint operation between all major regional police, sheriff and district attorney's offices in Yuba and Sutter Counties, along with representation from the CHP. The Task Force is under the direction of a supervisory special agent with the California Department of Justice, who answers to a Joint Powers Board made up of the department heads of the agencies mentioned.

primary ingredients in the manufacture of methamphetamine. In the course of his duties on the NET-5 team, Officer Hatfield was familiar and experienced with the use of these products in the manufacturing of methamphetamine.

Rhonda returned to the car and she and William drove to a Rite-Aid drugstore in the City of Colusa. Officer Hatfield and Agent Hillgus followed. A third agent, Agent Parker, watched Rhonda go into the drug store and purchase an additional box of pseudoephedrine. The pair then went to Gris Feed and Seed.

Officer Hatfield testified that William going in to purchase the legal limit of pseudoephedrine and then sending Rhonda in to again purchase the legal limit was suspicious. For the pair to then drive to another store and purchase more pseudoephedrine and other products used to manufacture methamphetamine was highly suspicious.

Officer Hatfield acknowledged pseudoephedrine can be purchased for "innocent" reasons. However, he testified the manner in which these purchases were made was not the normal way that "innocent" purchases would be made. "You don't have one person sit in the car while the other goes in. And usually, from my experience, this is to try to not direct attention to them."

Officer Hatfield had Colusa City police officers conduct a traffic stop of the Yackliches, and they were arrested for possession of pseudoephedrine with the intent to manufacture methamphetamine. A search of their car revealed two 32-ounce bottles of hydrogen peroxide, two 16-ounce bottles of iodine, a

white plastic bag with 377 loose pseudoephedrine pills, empty pseudoephedrine boxes, and a digital scale. In Rhonda's purse, there was .41 grams of methamphetamine, and a Wal-Mart receipt dated the previous date for two more bottles of hydrogen peroxide and three boxes of pseudoephedrine.

#### PROCEDURAL BACKGROUND

Both William and Rhonda were charged with possession of pseudoephedrine with the intent to manufacture methamphetamine (Health & Saf. Code, § 11383, subd. (c)(1)), and second degree burglary. (Pen. Code, § 459.)<sup>2</sup> William was also charged with driving on a suspended license. (Veh. Code, § 14601.1, subd. (a).)

William and Rhonda both filed motions to suppress contending that because "the original detaining/arresting officers witnessed no vehicle code violation, and lacked probable cause to stop or detain on the information they had at the time" the defendants "were illegally detained without legal or probable cause, and thereafter unlawfully arrested." The People responded that the officers had reasonable suspicion to stop and detain defendants to further investigate their pattern of activity which was suggestive of a violation of the Health and Safety Code.

After the hearing on the matter, the court found, based on the officers' experience, training and observations, and under

---

<sup>2</sup> Unless otherwise indicated, further statutory references are to the Penal Code.

the circumstances here wherein the defendants purchased materials that could be used in the production of methamphetamine on three separate occasions in one evening, by two individuals in two separate counties, "law enforcement had the right to make contact with defendants." Accordingly, the court denied the motions to suppress.

Following the denial of the motions to suppress, both defendants entered into a negotiated disposition. Under the terms of William's negotiated plea, he pled no contest to possession of methamphetamine with the intent to manufacture, and admitted a misdemeanor second degree burglary with no immediate state prison time. Under Rhonda's negotiated disposition, she pled no contest to second degree burglary and no contest to a reduced narcotics charge, a misdemeanor violation of Health and Safety Code section 11366.5, with no immediate state prison time. Both defendants were granted probation for a period of three years.

#### DISCUSSION

Defendants contend the court erred in denying their motions to suppress, as their arrest was based on a hunch, not probable cause. Defendants now concede that the police had reasonable suspicion to detain them. We affirm.

"The standard of appellate review of a trial court's ruling on a motion to suppress is well established. We defer to the trial court's factual findings, express or implied, where supported by substantial evidence. In determining whether, on the facts so found, the search or seizure was reasonable under

the Fourth Amendment, we exercise our independent judgment. [Citations.]” (*People v. Glaser* (1995) 11 Cal.4th 354, 362.)

“Probable cause to arrest exists if facts known to the arresting officer would lead a person of ordinary care and prudence to entertain an honest and strong suspicion that an individual is guilty of a crime.” (*People v. Kraft* (2000) 23 Cal.4th 978, 1037.) Thus, the question here is whether the facts known to Officer Hatfield would lead a reasonable person to entertain an honest and strong suspicion that the Yackliches were purchasing the pseudoephedrine for the purpose of manufacturing methamphetamine.

The cases upon which defendants rely, *State v. Bulington* (Ind. 2004) 802 N.E.2d 435; *People v. Lomas* (Ill.App. 2004) 812 N.E.2d 39; and *State v. Bergerson* (Minn.App. 2003) 659 N.W.2d 791,<sup>3</sup> each involved a single purchase by one person of items which could be used to manufacture of methamphetamine. The basic principle from those cases is, absent any other activity or information about a person, merely purchasing innocuous items which have numerous legitimate uses does not create either reasonable suspicion or probable cause. We do not disagree with this principle, but it does not aid defendants.

Defendants try to come within the reasoning of those cases, arguing the fact that they “purchased seven boxes of cold medicine and two bottles of hydrogen peroxide does not establish

---

<sup>3</sup> Defendant miscites this case as *State v. Bergerson* (2000) 59 N.W.2d 490.

probable cause to arrest." However, that is not a fair representation of the facts. Defendants went to one store, where William purchased the legal limit of pseudoephedrine. He left the store and returned to his vehicle, where Rhonda was waiting. She then went into the store and purchased the legal limit of pseudoephedrine and two bottles of hydrogen peroxide. They left the Target store and drove to another town to a Rite-Aid store, where Rhonda went in alone to purchase more pseudoephedrine. This is not an individual making a single purchase of an innocuous item. This is a couple splitting up to make numerous maximum legal limit purchases of methamphetamine precursors, driving between counties and going to multiple stores. As Officer Hatfield noted, in his experience, the manner in which these purchases were made was in an effort to deflect attention from the defendants.

We find this case more closely resembles *U.S. v. Ameling* (8th Cir. 2003) 328 F.3d 443 (*Ameling*); *State v. Maddox* (Iowa 2003) 670 N.W.2d 168 (*Maddox*); and *State v. Heuser* (Iowa 2003) 661 N.W.2d 157 (*Heuser*).

In *Heuser, supra*, 661 N.W.2d 157, Heuser and his companion went to a Target store together, but then separated and bought numerous boxes of cold medicine containing pseudoephedrine at separate registers. (*Heuser, supra*, at p. 160.) A Target employee called the police and gave them a description of the man and woman, the van they were driving and the license plate number. (*Ibid.*) The police located the van at a Wal-Mart store, where they saw the woman go in and come out with her

purchases. They then drove to a Walgreen's store and the man went into the store. Police contacted the store and asked what Heuser purchased and the employee told them he purchased several boxes of cold medication and asked about lithium batteries. (*Ibid.*) Officers then stopped the van and ultimately the woman consented to a search of the van. The court found that the "suspicious conduct" of Heuser "driving from store to store gathering medication and switching-off with his companion to buy the pills formed a solid basis upon which the officers had reasonable cause to stop the van . . . ." (*Id.* at p. 162.)

In *Ameling, supra*, 328 F.3d 443, the defendant and his cohort, Brown, went into a Target store together and each picked up two boxes of pseudoephedrine products. (*Id.* at p. 445.) They split up at the checkout lines, each going to a different cashier. Brown paid first, walked out of the store alone and waited for Ameling by his truck. A Target security officer called the police, described what he had seen and gave a detailed description of Ameling and Brown and the truck. While on the phone with police, he saw Ameling and Brown drive across the street to a Hy-Vee store and reported this to the police as well. The officers headed out to the Hy-Vee store and called ahead to a pharmacy employee. They described Ameling and Brown to her, said they might be buying methamphetamine precursors including lithium batteries, and asked her to find out what they were buying. The employee called back and reported they had bought a lithium battery. The officers waited for Brown and Ameling to leave the store and drive away. They followed the



truck out of the lot and decided to stop it because based on their training and experience, as they suspected Brown and Ameling were involved in manufacturing methamphetamine and were trying to conceal the activity by dividing the purchases of the precursors between themselves and different stores. (*Ibid.*) Brown and Ameling were asked some preliminary questions and the officers found they gave inconsistent answers about why they were in town and what they had done while there. (*Id.* at pp. 446, 448-449.) The court found, based on the defendants' behavior when considered "as a whole and in light of the officers' 'experience and specialized training'" there was probable cause to support the search of the vehicle. (*Id.* at p. 448.)

In *Maddox, supra*, 670 N.W.2d 168, Maddox and Gallegos went shopping together at a Wal-Mart store. The store manager contacted police because he recognized the items in their cart might be used to produce methamphetamine. (*Id.* at p. 170.) Maddox and Gallegos checked out separately, split up when they left the store and met up again at their vehicle. (*Ibid.*) Police officers saw additional Wal-Mart bags in the truck, which would be indicative of other purchases broken up to avoid detection. Officers asked Maddox some questions about his purchases and he gave "facially valid" explanations for each item. (*Id.* at pp. 170, 173.) The court found, based on the entirety of the circumstances including the officers' experience and training, there was probable cause to search the truck. (*Id.* at pp. 173-174.)

Like the cases above, in this case, defendants split up to make multiple purchases of methamphetamine precursors at different stores. This was not an isolated purchase of legal goods, but rather a series of purchases of methamphetamine precursors in a very short period of time. Officer Hatfield, as a member of the NET-5 team, is an officer with specialized training in narcotics investigations. "While each individual action taken by the defendants could be susceptible to innocent explanation, their behavior must be considered as a whole and in the light of the officers' 'experience an specialized training.' [Citation.]" (*Ameling, supra*, 238 F.3d at p. 448.)

"Considering together all the factors previously described, no matter how innocent each may appear alone, we conclude 'a person of reasonable prudence would" (*Maddox, supra*, 670 N.W.2d at p. 174) entertain an honest and strong suspicion the Yackliches were purchasing the pseudoephedrine for the purpose of manufacturing methamphetamine. Accordingly, there was probable cause for the arrests.

#### DISPOSITION

The judgment is affirmed.

\_\_\_\_\_  
MORRISON, J.

We concur:

\_\_\_\_\_  
NICHOLSON, Acting P.J.

\_\_\_\_\_  
RAYE, J.